

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Advanced Television Systems)
 and Their Impact upon the)
 Existing Television Broadcast)
 Service)

MM Docket No. 87-268

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Cosmos Broadcasting Corporation ("Cosmos"), licensee of television station WSFA(TV), NTSC Channel 12, Montgomery, Alabama, by its attorneys, and pursuant to 47 C.F.R. § 1.429(f), hereby opposes the Petition for Reconsideration ("Petition") of the *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115 (released April 21, 1997) ("*Sixth R&O*"), filed June 13, 1997 by First Cullman Broadcasting ("FCB"). FCB proposes a change to the DTV Table of Allotments with respect to WVTM(TV), Birmingham, Alabama, which is an adjacent DMA to Montgomery, without adequate support or analysis of alternatives. Accordingly, Cosmos urges the Commission to reject attempts by low power television ("LPTV") stations — such as licensed to FCB — at this late stage to circumvent the full protection of full-service broadcasters.

WVTM(TV) in Birmingham was assigned DTV Channel 52 in the *Sixth R&O*. According to the Petition, low power television station W52BJ, Channel 52, Cullman, Alabama, as licensed to FCB, would be displaced by the operation of WVTM(TV)'s DTV transmissions. In its petition, FCB requests that WVTM(TV)'s DTV channel be reassigned

to Channel 12 and contends that this reassignment would be consistent with the Commission's standard for modifying the DTV Table — *i.e.*, the modification would result in "no new interference." Cosmos opposes the Petition to the extent that FCB seeks to change WVTM(TV)'s allotment to Channel 12. Cosmos, which has operated WSFA(TV) in the adjacent Montgomery, Alabama DMA on NTSC Channel 12 for nearly 40 years, would be subject to significant harmful interference as a result of the proposed reallocation. As shown in the Technical Exhibit ("Attachment A"), FCB's proposal would result in co-channel short-spacing of nearly 100 kilometers.

FCB's purported showing that no new interference would be created by WVTM(TV)'s proposed reassignment is utterly inadequate. It relies solely on a list, generated by another petitioner, of potential alternative channels that allegedly would not cause new or additional interference. FCB provides no contours, no maps and no comparison to confirm that the modification would, in fact, cause no new interference. In effect, FCB is attempting to use a completely unsupported list of supposed alternatives as *prima facie* evidence that its proposed modification is acceptable, and to shift to WSFA(TV) the burden of demonstrating that the proposal is unacceptable. This burden-shifting approach would be inappropriate even if the petitioner were a full-power station. It is particularly inappropriate where, as here, the petitioner is a low power station. The Commission has consistently made clear throughout this proceeding that LPTV stations are to be accorded secondary status.

Cosmos believes that a more appropriate — and likely more successful — approach for FCB would be for W52BJ to identify an alternate available channel for itself and provide

an adequate showing that such a proposal would create no new interference. The Commission's DTV Table was generated under the guiding policies of minimizing interference between and replicating coverage of full-power broadcasters. Rather than disturbing the Commission's optimized approach by asking full-power broadcasters to find new DTV channels, LPTV stations should identify available allotments for their own use. The Commission has gone to some effort in providing procedures for displaced LPTV stations to do just that in an attempt to mitigate the effect of the transition on low power stations.^{1/} Moreover, given the smaller coverage areas of LPTV stations, they are better positioned than full-power stations to find available allotment slots in a tight spectrum market. FCB, however, considers the option of moving to another channel to be "expensive and time-consuming," yet it seeks to force Cosmos to undertake just such an "expensive and time-consuming" search itself.^{2/} Attempts to subordinate full-power broadcasters to LPTV demands for allotment modifications to full-power broadcasters should be rejected outright even if other allotments are unavailable to the low power station.

While Cosmos is sympathetic to efforts to mitigate the effect of the DTV transition on secondary, LPTV stations, FCB's approach subverts the Commission's primary DTV objectives. If FCB wishes to remedy its potential displacement, it must find a feasible alternative for itself before seeking to force full-power stations to move to other channels and likely initiating a ripple of new interference across adjacent communities. Moreover, FCB should provide concrete evidence to show that any proposed modification — whether of its

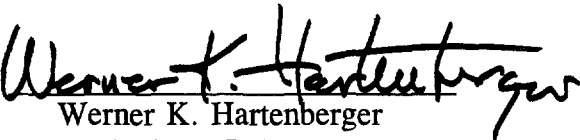
^{1/} See, *Sixth R&O* at ¶¶ 144-147.

^{2/} *Petition* at 3.

channel assignment or that of another station — would, in fact, result in no new interference. For the foregoing reasons, Cosmos requests that the Commission reject the FCB Petition for the reassignment of Channel 52 as the DTV allotment for WVTM(TV) in Birmingham, Alabama.

Respectfully submitted,

COSMOS BROADCASTING CORPORATION

By 
Werner K. Hartenberger
H. Anthony Lehv
Scott S. Patrick

Its Attorneys

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
202-776-2000

Dated: July 18, 1997

ATTACHMENT A

Technical Exhibit

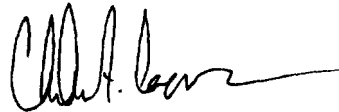
TECHNICAL STATEMENT
COSMOS BROADCASTING CORPORATION
STATION WSFA(TV)
MONTGOMERY, ALABAMA

This statement was prepared on behalf of Cosmos Broadcasting Corporation, licensee of television broadcast station WSFA(TV) on NTSC Channel 12 at Montgomery, Alabama and supports a reply comment to a petition for reconsideration for the Federal Communications Commission action in MM Docket No. 87-268, in the matter of *Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service, Sixth Report and Order* (herein "Sixth Report"). Specifically, Cosmos is replying to the comments submitted by First Cullman Broadcasting, Inc., licensee of low power television station (LPTV) W52BJ on Channel 52 at Cullman, Alabama.

Within the W52BJ comments, a request is made to substitute the allocated DTV channel of full-service broadcast station WVTM-TV at Birmingham, Alabama for Channel 12, which would be co-channel to WSFA(TV) at Montgomery. WVTM-TV was allocated DTV Channel 52. W52BJ claims interference will occur to its low power television station from the WVTM-TV Channel 52 DTV operation. As a counterproposal, W52BJ, among other changes, requested the WVTM-TV DTV channel be reallocated to Channel 12 at Birmingham. According to W52BJ, this will preserve the low power television station service area.

Cosmos notes that the actual separation distance between WSFA(TV) NTSC Channel 12 at Montgomery and the proposed co-channel DTV at Birmingham is only 178.2 kilometers. The required minimum separation distance, according to the Sixth Report, for co-channel, NTSC to DTV VHF stations in Zone II is 273.6 kilometers. This is a short-spacing of 95.4 kilometers. It is expected with this short-spacing that severe interference will occur to full-service WSFA(TV) NTSC Channel 12 at Montgomery from a Channel 12 DTV allotment at Birmingham.

Therefore, Cosmos is requesting that another alternate channel for WVTM-TV be considered. Cosmos does not believe that interference to the existing NTSC WSFA(TV) service area should occur in order to persevere the secondary status service area of the W52BJ low power television station.



Charles A. Cooper

July 17, 1997

du Treil, Lundin & Rackley, Inc.
240 North Washington Blvd., Suite 700
Sarasota, Florida 34236
941.366.2611

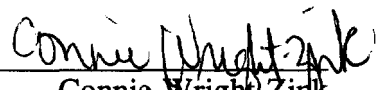
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition of Cosmos was sent by first-class mail, postage prepaid, this 18th day of July, 1997, to each of the following:

Joseph E. Dunne III, Esq.
150 E. Ninth Street
Suite 300
Durango, CO 81301

Counsel of First Cullman Broadcasting

Gary Stokes
General Manager
WVTM(TV)
1732 Valley View Drive
Birmingham, AL 35209



Connie Wright-Zink